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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 RONALD LORA, et al.,

4 Plaintiffs,

5 v.

11 CV 9010 (LLS)

6 J.V. CAR WASH, LTD., et al.,

7 Defendants.

8 -----x

9 July 3, 2013

10 3:11 p.m.

11 Before:

12 HON. LOUIS L. STANTON,

13 District Judge

14 APPEARANCES

15 ARENSON DITTMAR & KARBAN

16 Attorneys for Plaintiffs

17 BY: LAURA E. LONGOBARDI

STEVEN ARENSON

18 JERRY CHRISAFIS

19 Attorney for Defendants

20 LEAVITT & KERSON

Attorneys for Defendants

21 BY: PAUL E. KERSON

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(In robing room)

THE COURT: Well, where do things stand?

MR. KERSON: Paul Kerson, K-E-R-S-O-N. I was the attorney for the defendants but I was fired. Defendant -- the lead defendant no longer has confidence in me, doesn't want to listen to me, doesn't want to follow my advice. So he fired me. That's what happened. So I thought that was sufficient.

But then I heard from your Honor that I have to make a formal motion, so I did. And that's my application, to be relieved, because the client -- there's no longer an attorney-client relationship.

THE COURT: Do you have any replacement in sight?

MR. KERSON: Okay. This is where it gets rather complicated. My colleague, Jerry Chrisafis, is the corporate attorney for the four corporations which are defendants. And these have been his clients for many, many, many years. I'm only on this case for this case only. So I talked to Mr. Chrisafis at length, and he has been diligent in trying to find substitute counsel, which he could probably tell you all of his efforts, if you want to hear it.

MR. CHRISAFIS: Good afternoon, your Honor.

When this whole thing happened about three, four weeks ago, I called various attorneys that I know and asked them to -- if they could recommend somebody that handles defense of these type of cases. I don't have the list of names with me,

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1 but I'm basically the guy in the office. But I called several  
2 firms, your Honor. One firm didn't want to get involved  
3 because it was their policy of not getting involved in the  
4 middle of a lawsuit. Another one, they retainer was just --  
5 the retainer fee was just totally, totally, totally outrageous.  
6 I also contacted other firms, and I'm waiting to hear back from  
7 one attorney. One firm didn't want to get involved because  
8 it's in the summer and it's -- the people are on vacation,  
9 etc., etc., etc. But all together I've contacted four or five  
10 firms.

11 And to be honest with you, most of the firms -- one of  
12 the firms -- two of the firms I contacted do these cases as  
13 plaintiffs. They don't do them as defendants. And if they do  
14 them -- so I was kind of, whatever.

15 Now, let me just say one other thing, your Honor, with  
16 respect to myself. I felt compelled to put out a declaration  
17 in myself because Ms. Lora's insisting that I be the attorney  
18 of record and I take over for Mr. Kerson. If I could, Judge --  
19 and I'm representing these people 20, 25 years. I'm admitted  
20 in the court in the Eastern District. I would have done that  
21 from the get-go. I would not have had Mr. Kerson or anybody  
22 else, whatever.

23 Unfortunately, I don't do these type of cases, your  
24 Honor. I don't do Federal Labor Standards Act. But the client  
25 is my client for a long period of time. And basically, you

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1 know, I'm sitting in here, you know, holding his hand, so to  
2 speak. He wants me to be here because he has trust and  
3 confidence in me. But, again, if I could do this kind of work,  
4 I would have done it. I would gladly make a fee and I would  
5 gladly -- whatever, I would gladly come to court and represent  
6 them. The only work I've done in federal court in the last 10,  
7 15 years, I used to do some bankruptcy work, mostly in the  
8 Eastern District. And I stopped doing that when the bankruptcy  
9 laws changed.

10 And, you know, if you read her papers, she's -- I  
11 don't want to -- plaintiffs' attorneys are insisting that, you  
12 know, I get appointed and I be the attorney. First of all,  
13 they don't want me to be the attorney. Even if they asked me,  
14 I would decline, your Honor, because I would be doing my client  
15 a disservice. The idea here is to protect them and represent  
16 them the best I could. And when Mr. Kerson basically, you  
17 know, dropped out of the case, it was up to me to carry the  
18 ball, so to speak. I'm the one who wrote to your Honor and  
19 told you what was going on and to please ask for a conference,  
20 whatever, which then started the whole -- you know, the whole  
21 process here, your Honor.

22 And I do have phone calls, and I do have  
23 communication, and I do have other people I'm talking to and  
24 interviewing. But at this point in time he hasn't hired  
25 anybody to represent him because, your Honor, to be very honest

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1 with you, the stakes get very high. If plaintiffs win, they  
2 could put them out of business. So we're not talking about,  
3 you know, a little, you know, personal injury case or, you  
4 know, breach of contract where the damages aren't going to be  
5 capped, you know, 30, 40, 50 grand here. Like I said, the  
6 stakes are very, very high. I want to -- he's entitled to get  
7 the best possible counsel that he can afford.

8 And the other thing is, your Honor, if somebody does  
9 come in, you know, it's not going to be fair to them. They're  
10 going to have to read voluminous files. They're going to have  
11 to read 18 depositions. They're going to have to prepare for  
12 18 depositions of the plaintiffs. There's going to be five  
13 depositions of the defendants. There's going to be pretrial  
14 orders, your Honor, that have to be prepared. There's going to  
15 be jury questions that have to be prepared. There's going to  
16 be a trial you have to prepare for.

17 So it's not easy task for anybody coming in here, your  
18 Honor. It's almost a Herculean task in that sense, for  
19 somebody to come in there in the middle of the trial. That's  
20 why, you know, we ask for -- I don't know if we asked for 60  
21 days or 90 days to get somebody, so we can get this thing  
22 moving and do whatever, get it going along.

23 And the other thing, your Honor, is, you know, I know  
24 what Laura's going to say, these are dilatory tactics, we're  
25 doing it for some purpose. It wasn't. We had a meeting in my

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1 office -- I don't want to say too much because I'm -- overborne  
2 by attorney-client privilege, as your Honor knows. And  
3 basically, you know, it was not a pretty scene. It erupted  
4 into a situation where, you know, it's like telling -- I don't  
5 want you to be my lawyer anymore. And there were -- you know,  
6 doesn't have trust and confidence in this man anymore. And,  
7 you know, after a year and a half, I don't know the reasons he  
8 said that. And I tried to speak to him.

9 I also told him I'm going to try to do what I can to  
10 get him another attorney to represent him here, because, you  
11 know, I still am his personal attorney. I am the corporate  
12 attorney, even though I'm not the attorney here on this record.  
13 I know I put in an appearance, as I pointed out in my papers.

14 That's all I have to say, your Honor.

15 MS. LONGOBARDI: Laura Longobardi for the plaintiffs.

16 Judge, I've laid out in my declaration what I think  
17 should happen here, but just to address some of the points that  
18 Mr. Chrisafis has just said, for him to say, first off, that  
19 there were voluminous files, there are no voluminous files.  
20 They haven't produced a single document in this case other than  
21 the list that's been shown to your Honor that purports to be  
22 their employees as of September -- excuse me, July 20, 2012.  
23 There's been no massive document production by the defendants.  
24 Due to the nature of this kind of case, there are not many  
25 documents that the plaintiffs have. There's probably a handful

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1 that amounts to maybe 20 to 25 pieces of paper, all of which  
2 had been produced long ago to the defendants.

3 The 18 depositions that have already been taken, it's  
4 actually already -- 17 of the 18 were approximately 15 minutes  
5 each, and I believe the longest of those is 20 pages. So there  
6 isn't a voluminous record that new counsel would have to become  
7 familiar with to begin with.

8 But before we get to the issue of new counsel,  
9 Mr. Chrisafis and Mr. Kerson are repeatedly talking about they  
10 have to protect the defendant's interests. And while I can  
11 sympathize with them as counsel, my interest here is to protect  
12 the plaintiffs. This lawsuit was filed December 9, 2011; not  
13 last June or July, as Mr. Kerson said in his declaration. It's  
14 been well over 19 months since this case was filed, and  
15 essentially this case has gone nowhere.

16 We met before your Honor two months ago, at which time  
17 we set out a plan that we were going to be on trial August 5th.  
18 Your Honor set a date of July 15th for the plaintiffs to  
19 provide their half of the pretrial order to defendants, set  
20 July 31st as the date to get the final pretrial order to your  
21 Honor.

22 When we were here last, with Mr. Kerson, with  
23 Mr. Chrisafis, with Mr. Vasquez, myself and Mr. Arenson, I said  
24 that I wanted to take the -- excuse me, the defendants'  
25 depositions, Mr. Kerson said that he wanted to take plaintiffs'

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1 depositions. I waited approximately two weeks, thinking that  
2 Mr. Kerson would contact me to start scheduling plaintiff  
3 depositions. When I heard nothing, I started noticing  
4 defendants' depositions with the end game of July 15th; I had  
5 to get a draft pretrial order to the defendants.

6 Two months have gone by now. And at this point the  
7 prejudice to the plaintiffs, who have been thinking that  
8 finally they're going to get their day in court, has been huge.  
9 They have no idea when they're going to get new counsel. The  
10 date keeps changing as to when they think they're going to get  
11 new counsel. Frankly, it's already been 30 days, or almost 30  
12 days, since they first advised that Mr. Kerson's not going to  
13 be counsel of record anymore. We need to find new counsel.

14 At this point we think we should stay on trial  
15 schedule. I think that we should simply enter preclusion  
16 orders because of discovery defaults that are already in place  
17 on account of the defendants, and we should go forward with  
18 trial on August 5th, based on the plaintiffs' testimony.  
19 Because the plaintiffs have appeared for their depositions  
20 already. The plaintiffs have been willing and able to appear  
21 for their depositions up to this point. And the plaintiffs  
22 ought not to be penalized because of all the drama that's going  
23 on with the defendants, drama that comes at the very end of a  
24 long history of delay and defaults.

25 MR. CHRISAFIS: May I be heard again, your Honor?



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1 THE COURT: Sure.

2 MR. CHRISAFIS: By the way, Jerry Chrisafis. I don't  
3 know if I put my name before.

4 Your Honor, in good faith, you know, we spent -- and  
5 they did, too -- money at a mediation last December in an  
6 effort to try to resolve this case. We spent a whole day  
7 literally, nine hours. I got two offers from the -- what do  
8 you call it? From, I'm sorry, my clients, if I -- correct me  
9 if I'm wrong, I don't remember getting any kind of responsive  
10 number saying, okay, this is the number, then, you know, you  
11 start the negotiation process; this is what I'm offering, they  
12 come down, we come up, and try to find some happy medium to  
13 resolve the claim. But we're not -- I mean, if you were  
14 delaying, he wouldn't be spending -- he'd spend over  
15 6,500-some-odd dollars for a mediation Judge. To me that's a  
16 waste of money. Why would I do that if I'm trying to delay the  
17 case? Would I spend that kind of money? Would I invite the  
18 client to spend that kind of money?

19 And we have had some discovery, brief as it may have  
20 been, of the plaintiffs. And we've had fights over -- courts  
21 subsequently ruled about what you can and you can't ask for,  
22 Social Security numbers and tax returns and all those other  
23 items. So we've had EBTs, like I said, short and brief as they  
24 are. So it's not that we haven't done anything in the case.  
25 Granted, maybe it's not moving as fast as the plaintiff wants

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1 it to be, but we've done something here. It's not like we've  
2 sat here and done totally nothing.

3 THE COURT: What about responding to their discovery  
4 demands?

5 MR. CHRISAFIS: Well, Judge, I'll be honest with you,  
6 I was not -- like I said, I'm not the attorney of record in  
7 terms of -- what do you call it? Maybe that question is better  
8 asked of Mr. Kerson.

9 THE COURT: He's sitting right here.

10 MR. KERSON: Okay.

11 MR. CHRISAFIS: I'm not trying to throw it on him  
12 but --

13 MR. KERSON: Okay. I have to say this carefully. I  
14 don't want to violate the attorney-client privilege, so I can't  
15 go into my dispute with the clients, unless you want to do it  
16 in camera. I guess I could do that. But I really don't  
17 think -- I'm in an awkward position. I've been fired, so I  
18 can't really speak for him. I can tell you what happened, but  
19 I can't speak for the defendants anymore. And I don't want to  
20 tell you what happened --

21 THE COURT: You not only can, it's your duty to do so  
22 until I relieve you.

23 MR. KERSON: Okay, then I will. The dispute I had --

24 THE COURT: And I'm not by any means thinking of  
25 relieving you.

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1 MR. KERSON: Well --

2 THE COURT: Also, it's presenting me with a situation  
3 in which the only solution is to continue you in your present  
4 position as trial counsel for the defendants. Otherwise, it's  
5 going to be impossible to hold the trial as scheduled.

6 MR. KERSON: Okay. Then can I speak to you in camera?

7 THE COURT: Yes.

8 MR. KERSON: Thank you. So can they be excluded for  
9 the time being?

10 (Pages 12 through 17 sealed by order of the court)

D73elorc

(In robing room)

THE COURT: Local civil Rule 1.4 provides in full text, quote, an attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the Court, and may not withdraw from a case without leave of the Court granted by order. Such an order may be granted only upon a showing, by affidavit or otherwise, of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar, and whether or not the attorney is asserting a retaining or charging lien. All applications to withdraw must be served upon the client and, unless excused by the Court, upon all other parties.

The papers submitted in support of the application to withdraw do not show satisfactory reasons for withdrawal or displacement. And they take no account of the fact that there is a trial date set by order way back in May upon the then consent of the parties for a trial on August 5. And from what I hear from the defendants' statement this afternoon, there is no prospect of being ready for that trial, if anybody but Mr. Kerson is in charge of the matter for the defense. And accordingly, I am not going to relieve him until, if at any point, a proper and satisfactory replacement appears who can assure the Court that he or she will comply with the scheduling order set by this Court on May 3, 2013.

Mr. Kerson is charged with the responsibility of

D73elorc

1 meeting those dates. Now, to facilitate that, it seems to me  
2 good administration, but I will hear counsel for both sides in  
3 this respect, to direct complete answers to the plaintiffs'  
4 discovery demands to be served on the plaintiffs by the end of  
5 next week. That's Friday, July 12. I'll give them the benefit  
6 of the weekend and make it Monday, July 15th. Depositions are  
7 to be conducted as quickly as possibly available, taking the  
8 witnesses in whatever order can be readily arranged and carried  
9 out, without a special regard to priority considerations. The  
10 unavailability of any defendant to appear for deposition may be  
11 submitted as supporting an order of preclusion of that  
12 defendant's testimony at trial, but the determination on that  
13 point would await further order in each case.

14 By Friday, July 26, defendants shall respond to  
15 plaintiffs' draft pretrial order and offer their opposition  
16 concurrence and alternate drafts for inclusion in the joint  
17 pretrial order.

18 I'll entertain comments of counsel.

19 MR. KERSON: We respectfully except.

20 THE COURT: Excuse me?

21 MR. KERSON: Respectfully except.

22 THE COURT: Accepted or excepted?

23 MR. KERSON: E-X-C-E-P-T.

24 THE COURT: No exceptions are necessary, to save you  
25 the point.

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1 MR. CHRISAFIS: Is the trial date still August 5th,  
2 your Honor?

3 THE COURT: Excuse me?

4 MR. CHRISAFIS: Is the trial date still August 5th?

5 THE COURT: Of course. There's no good reason offered  
6 for adjourning it.

7 MR. CHRISAFIS: I want to say one thing, your Honor.  
8 Mr. Vazquez is outside. I don't know if you want to hear from  
9 him or if you want to speak to him or -- because I brought him  
10 here.

11 THE COURT: I have no wishes in the matter except to  
12 administer the case in accordance with the rules already laid  
13 down.

14 MS. LONGOBARDI: Your Honor, I understand you said  
15 there's not going to be any regard to priority given in terms  
16 of depositions.

17 THE COURT: It shouldn't be any reason to proceed or  
18 not proceed with a given witness on a given day.

19 MS. LONGOBARDI: Understood.

20 THE COURT: The main thing is take the testimony when  
21 you can.

22 MS. LONGOBARDI: But I don't want to find myself in a  
23 situation where I am repeatedly producing plaintiff after  
24 plaintiff after plaintiff and no defendant has appeared before  
25 me yet, because that prejudices the plaintiffs. We have done

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1 what we've needed to do so far in this case, and if I'm not  
2 getting --

3 THE COURT: What's the prejudice? Isn't the usual  
4 thing that the defendants take the plaintiffs' deposition?

5 MS. LONGOBARDI: It is, but to some extent they've --

6 THE COURT: Why is that prejudicial in this case?

7 MS. LONGOBARDI: Because according to the current  
8 schedule, if they're not responding to any of my written  
9 discovery demands until Monday, July 15th, which is the same  
10 day by which I have to provide my version of the pretrial order  
11 to them, I'll be doing that without the benefit of any of that  
12 discovery. And if we've been only taking plaintiffs'  
13 depositions between now and July 15th, then I'll be having to  
14 produce my version of the pretrial order, again, without the  
15 depositions of the defendants.

16 THE COURT: Look, all of this is conceptual. The fact  
17 of the matter is they say that none of your clients ever worked  
18 for them. You say they did and they worked at times which  
19 presumably you can specify, you know, more or less effectively.  
20 What secrets are going to be disclosed that are going to  
21 prejudice your position on trial?

22 MR. ARENSON: Your Honor, if I might.

23 THE COURT: This is shadow boxing?

24 MR. ARENSON: The only conceivable prejudice that I  
25 can see would be in the event the defendant does not appear for

D73elorc

1 testimony, and then the Court were to not rule that their  
2 testimony would be precluded, we would be facing trial without  
3 the defendant having appeared. And they've gotten to depose  
4 the plaintiff but we've never gotten to depose the defendants.

5 THE COURT: Well, there are a couple of answers to  
6 that.

7 MR. ARENSON: I know that's hypothetical.

8 THE COURT: They're not very tasteful to you, but the  
9 answers are, number one, in criminal cases pretrial discovery  
10 can be very sketchy indeed. For hundreds of years lawyers  
11 tried cases without much, if any, pretrial discovery. In  
12 neither of those situations were there marked injustices for  
13 lack on the one side or the other.

14 Furthermore, your proposition is very iffy; if this,  
15 if that and then if this something else. Well, I'll take my  
16 problems single steps by single steps.

17 MR. ARENSON: Okay.

18 THE COURT: As a general matter, I'm trying to get  
19 most of the evidence out in a way that it can be used in trial  
20 without too many conceptual difficulties.

21 MS. LONGOBARDI: All right.

22 MR. CHRISAFIS: May I be heard again, your Honor,  
23 please.

24 THE COURT: Yes, you can.

25 MR. CHRISAFIS: In view of what's happened here, your



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1 Honor --

2 THE COURT: Nothing's happened. What has happened  
3 here is that a lot of changes you want haven't occurred.

4 MR. CHRISAFIS: In view of the fact that August 5th is  
5 less than a month away, your Honor, I feel compelled to ask,  
6 maybe the Court can give us a little more -- push back the  
7 trial date a little bit so we can get all this discovery done.

8 THE COURT: No. The trial date was set months ago.  
9 The only problem that is facing you is that you haven't honored  
10 it.

11 MR. CHRISAFIS: Note my exception or objection, your  
12 Honor, for the record.

13 THE COURT: Yes, certainly.

14 If there's nothing further, I think we're adjourned.

15 MS. LONGOBARDI: Thank you, Judge.

16 THE COURT: Thank you all.

17 (Adjourned)  
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